

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVER BASIN 43A  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: MT Yack Ranch, LLC

**CASE 43A-0608-R-2022**  
43A 37092-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

The above-captioned claim appeared in the Preliminary Decree for Basin 43A. The claim is owned by MT Yack Ranch, LLC. The claim did not receive objections,

counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination.

The claim was consolidated into Case 43A-0608-R-2022 to resolve the issue remarks.

### FINDINGS OF FACT

1. Claims 43A 37092-00 appeared in the Preliminary Decree as an irrigation claim. The claim received the following issue remark:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

Claim 43A 37092-00 also received the following issue remark:

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

2. On February 18, 2022, the Court set a filing for Claimants to file information or evidence addressing the issue remarks on the claims. Nothing was filed by the ordered deadline.

3. On November 15, 2022, the Court set a filing deadline requiring the Claimants to work with the DNRC under §85-2-248(5), MCA to address the issue remarks on the claims.

4. On February 10, 2023, DNRC Water Resources Specialist Mary Crable filed her *Memorandum* in this matter. Ms. Crable's *Memo* states that she was contacted by Troy Redmon, counsel for Claimant MT Yack Ranch, LLC. In her *Memo*, Ms. Crable states that after review of decree 2717, "[a] decree exceeded issue does not exist as a result of this portion of decree 2717 being claimed for water right 43A 37092-00." The *Memo* goes on to note that DNRC accepts this copy of the decree as evidence of the priority date and recommends removal of the remark. Ms. Crable's *Memo* also addresses the point of diversion issue remark stating that the "remark appears to have been placed on the claim in error," and that DNRC recommends removal of the remark. Finally, Ms. Crable notes in her *Memo* that the Claimants agree with the contents therein.

5. Claim 43A 37092-00 also received an issue remark from the DNRC stating that the claimed flow rate exceeds the 17 GPM per acre guideline and cannot be confirmed due to lack of data. No objections were filed.

#### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remarks placed on the above-captioned claim.

2. Based on the information contained in Ms. Crable's *Memo*, along with the stated agreeance with said information from claimant MT Yack Ranch, LLC, the priority date and point of diversion elements of the claim should remain as they appear on the abstract, and the issue remarks should be removed.

3. The flow rate issue remark appearing on claim 43A 37092-00 does not overcome the prima facie status of the statement of claim and should be removed.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

MT Yack Ranch, LLC  
171 Shields River Road E.  
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**Service via Electronic Mail**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 37092-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MT YACK RANCH LLC  
171 SHIELDS RIVER ROAD E.  
LIVINGSTON, MT 59047

**Priority Date:** JULY 1, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.00 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 30.00

**Source Name:** SHIELDS RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	4	1S	10E	PARK

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		W2SE	4	1S	10E	PARK

**Total:** 30.00